> **applications for a substantial fee, usually $7,000 per application.** Typically, the company representative did not disclose obligations and restrictions that the Commission's rules imposed on SMR licensees.
>
> On January 14, 1994, the U.S. District Court issued a preliminary injunction freezing the assets of the application preparation companies, and appointed Goodman as the Receiver (Receiver) for four of these companies (Receivership Companies).[12]

(45) A clear understanding of the FCC's opinion of "application mills" is reflected in the following comments of Reed E. Hundt (then Chairman of the FCC, see NEWSReport No. DC 95-85, Released June 15, 1995)

> As numerous newspaper articles and federal and state investigations have demonstrated, the Commission's wireless cable lotteries have done **"more to enrich con artists** than to grant ordinary citizens entree into the cable business." A. Crenshaw, "No Jackpot in This Lottery," Washington Post, Apr. 19, 1992.
>
> **The mechanism for the con is the "application mill."** The Commission's MDS lotteries have led to an **"explosion in abusive application mills that seek to reel in unwary small investors with the lure of the latest in high tech and the promises of quick riches**." Investor Alert, p. 1.

(46) Waugh's first scheme involves a company called "Smartcomm LLC" (or an affiliate – Smartcomm License Services, LLC), which is charging between sixteen thousand dollars ($16,000) and thirty thousand dollars ($30,000) to prepare FCC license applications that virtually anyone could fill-out and file with and FCC fee of a few hundred dollars.

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[12] Goodman was appointed Receiver for Metropolitan Communications Corp., Nationwide Digital Data Corp., Columbia Communications Services, and Stephens Sinclair, Ltd. (Receivership Companies). *FTC v. Metropolitan Communications Corp.* No. 93 CIV 0142 (JFK) (S.D.N.Y., filed January 11, 1994) at 15.

(47) **The above comparison of Smartcomm's current activities to past "application mills" that were deemed fraudulent is obvious.** A full analysis of the economics and legalities of Waugh's scheme is beyond the scope of this filing; however, a few brief further comments are appropriate.

(48) The "applications" are for a tiny amount of spectrum in the 800 MHz band. These are for a group of 4 or 5 channels with significant operating restrictions. Each application is for approximately one-quarter of a megahertz of spectrum. By comparison, most major cell phone operations have minimum of 25 MHz in all markets with an overall average of 60 MHz. Thus Waugh's "applications" are in the range of one-half of one percent to one percent of the spectrum used in cell phone operations. Any other application has very limited revenue generating potential or value.

(49) The second part of Waugh's plans is much more complicated and somewhat diabolical as its focus is on how he gains control of a company (the Defendant) that fired him for incompetence. Because of his problems with the FCC and other reasons, he could not pursue his goal directly. Instead, he needed to create a situation whereby someone else (person and/or entity) would carryout portions of his plan. Thus enters Michael Judy (the Plaintiff) as a co-conspirator.

(50) Waugh needed to have co-conspirators in order to effectuate his plan; but they also serve a second purpose. Additionally, Waugh is attempting to insulate himself

from certain legal risks (civil and criminal) by having Judy be the front man for certain components of Waugh's master plan. Waugh's plan puts Judy (and others) front and center for certain legal risks (civil and criminal).

(51) Waugh's master plan involves multiple steps and multiple persons and/or entities. **Step One of the Master Plan** was to generate discretionary funds. He does this by having Smartcomm LLC operating an "application mill" as described above.

(52) **Step Two of the Master Plan** was to conceptually devise a structure/entity that would serve as a vehicle raise funds and participate in the takeover of Preferred (Defendant). To that end, Waugh "created" (conceptually) an entity known as "Preferred Spectrum Investments, LLC" (hereinafter referred to as "PSI LLC"). Despite the use of a name similar to that of the Defendant (Preferred Communication Systems, Inc.) there is no connection between the two. It appears the name was selected in order to help convince investors that there was a connection, thus enabling Waugh and Judy to tie in Preferred's financial prospects into those of PSI LLC.

(53) **Step Three of the Master Plan** was to find someone that Waugh could manipulate to formally create and then serve as the Manager/Principal of PSI LLC; this person was Mr. Michael Judy (the Plaintiff).

(54) **Step Four of the Master Plan** was to have PSI LLC (i.e. Judy at the behest of Waugh) raise a limited amount ($150,000) of funds from "friendly" investors to be used to launch an extended fund raising effort to provide the $3 million necessary to effectuate the master plan. Of this amount, $1,197,500 would be used to acquire certain FCC licenses at an inflated price from Smartcomm (Waugh's company) that are a byproduct of the "application mill" described above. These would include 9 channels (less than ½ of a megahertz) in 25 markets. (*See comments below, in paragraph 40 to 42, regarding PSI LLC, Waugh, and Judy's false and misleading statements on this element*). Secondly, approximately $1.2 million will be used to obtain a substantial equity position in the Defendant (Preferred) by creating a sweetheart deal using the guise of a "loan" to obtain heavily discounted "bargain" stock warrants.

(55) The materials that are being circulated by Smartcomm, Waugh and Judy to induce investors are lathered with false and misleading information. One example is a stated value of the licenses to be obtained via the "application mill." "They" (Smartcomm, Waugh and Judy) use $1.49 per MHz/pop as the valuation measure. (Note: a "per MHz/pop" dollar amount is commonly used in the industry, a parallel is stating land at a value "$ per acre"). Not only is the $1.49 amount **unrealistically too high**, but "they" state that the "source" of that value is the "FCC's Appraised Value." **This statement could not be any further from the truth.** First, the FCC doesn't "appraise" spectrum. Second, Waugh and Judy have creatively, and improperly, latched onto the $1.49 amount.

(56) In the FCC's 800 MHz Rebanding Proceeding (WT 02-55), the FCC had to make a determination of the value of certain portions of Nextel's spectrum. The $1.49 per MHz/pop was a determination by the FCC that was unique to Nextel, it was not for spectrum in general. Furthermore, it was based on Nextel's spectrum not only being "cellular" qualified, but also being used in Nextel's "**high-density cellular**" system. In contrast, the spectrum available via Smartcomm's "application mill" has been re-designated (i.e. downgraded) to the "non-cellular" segment of 800 MHz bandwidth. It has restricted use, and most significantly, **cannot be used in a "high-density cellular"** system (i.e. Nextel, Sprint, AT&T, Verizon, etc. can't use it). Waugh and Judy have "cherry-picked" data from the FCC and, with willful intent, are misusing the data to induce investors. It is simply an "apples-and-oranges" abuse of information. The manner in which certain data is included in materials circulated by Judy, Waugh and Smartcomm, an innocent investor will be duped into thinking that the FCC (a governmental agency) has, not only valued the spectrum they are investing in, but at an extraordinarily high price; thus virtually guaranteeing a massive financial return. **This is unquestionably false and misleading**.

(57) The materials that are being circulated by Smartcomm, Waugh and Judy to induce investors include calculations and extrapolations using (incorrectly) the $1.49 per MHz/pop as the valuation measure. As an example of the magnitude of its misuse, Smartcomm, Waugh and Judy claim the FCC licenses that PSI LLC is going to acquire from Smartcomm for **$1,197,500** (described above, P38) are actually worth at least forty-

two million two hundred sixty five thousand dollars (**$42,265,000**), which by their calculations is a *Return on Investment* to PSI LLC of **37.87 times**, or **3,787%.**

(58) **Step Five of the Master Plan** was for Waugh to find someone that he could manipulate into pursuing the removal of Charles M. Austin (described in P 14, above) as founder, principal shareholder, sole officer and sole director; this person was Mr. Michael Judy (the Plaintiff). **Austin's removal is a critical part of the "Waugh-Judy master plan" for two reasons. One,** Austin refuses to acquiesce to Waugh's demands (see paragraph 40, above) of his entitlement to stock in the Defendant. Austin's position is in the best interest of the Defendant (Preferred) and its creditors and shareholders. Thus, Waugh is pushing Judy to oust Austin, to be replaced by person or persons who will retroactively approve an exorbitant compensation package (including stock ownership) for Waugh. **Second**, Austin (and the Defendant) want nothing to do with Smartcomm and/or PSI LLC (or any funds they suggest "loaning" to Preferred) due in large part to the persons involved and the manner by which they are raising funds, which may be considered as **"ill-gotten gains**." PSI LLC's business plan is predicated on interacting with Preferred (Defendant), thus Judy as Managing Member of PSI LLC is endeavoring to oust Austin.

(59) Waugh is at the center of the conspiracy. He has problems with the FCC and has an intractable business dispute with the Defendant regarding past compensation as a consultant. Waugh is upset that the Defendant has not taken up his cause with the

FCC. Waugh is upset that the Defendant has not acquiesced to his compensation demands. As a result, Waugh has enlisted the participation of Judy (and others) to pursue a manipulation of the Chancery Court to have it unwittingly injected into matters properly before the FCC, or in matters between Waugh and the Defendant.

SPECIAL CIRCUMSTANCES/ DEFENSES RE: DEFENDANTS

(60) A full discussion of the Companies history and its relationship with its investors is beyond the scope of this filing; however, a brief summation is applicable due the criticisms (regarding a lack of information and conducting formal shareholder meetings) included in the Plaintiff's "Complaints." As the Plaintiff himself describes in paragraph #4 of the Complaint – **"Preferred is in the early stages of development to become a full service wireless telecommunications provider....".** Certain events beyond the Company's control have stalled its efforts to construct and operate wireless phone systems on its FCC licensed frequencies.

(61) In its early days, many years ago, the Company focused on developing a mobile phone system in Puerto Rico. It first acquired site licenses, then it participated in FCC Auction #34 in which in bid and paid approximately $32 million for geographic Economic Area ("EA") licenses in Puerto Rico and in certain other markets in the U.S. In addition to Puerto Rico, the company acquired licenses in nine markets, in two clusters (central and northern California cluster and the Washington DC/Virginia cluster).

(62) Within months of the Company's acquisition of its EA licenses, it was hit with its first "stifling event." This was the FCC's nationwide "800 MHz Rebanding Proceeding" (WT 02-55), which caused the Company to be effectively precluded from developing (i.e. constructing and launching commercial operations) its licenses, due to the uncertainties as to its "new" frequency assignments. Specifically, the FCC's " rebanding proceeding" has generated a series of new rules and orders, which mandate the relocation of all licensees (including those of the Company) in the 800 MHz band pursuant to a "Rebanding Plan" adopted by the FCC in 2004. The "Rebanding Plan" was to have been completed in June 2008; the FCC has extended it into 2010. To date, the Company has not received its new channel (frequency) assignments from the FCC. Preferred (and several other companies) believe that its treatment in the FCC Orders in the "800 MHz Rebanding Proceeding" is inequitable, discriminatory, anti-competitive and not in accordance with the stated objectives of the Proceeding. Accordingly, Preferred (and several other companies) have filed appeals in the U.S Court of Appeals for the District of Columbia. These cases are still pending.

(63) A second, and more ominous, "stifling event" was the FCC's EB Action (i.e. the "FCC Proceeding") which began in July 2007. A possible end result of this proceeding could have been the revocation and/or cancellation of all of the Company's FCC licenses. Such an outcome would effectively delete the Company from existence and totally wipeout over $40 million of invested capital. Thus for the past two years, the Company has effectively been precluded from virtually doing anything, other than

dealing with the FCC Proceeding. This proceeding added a second layer of suppression in the Company's development effort since its timing overlaps with that of the FCC Rebanding Proceeding. In effect, just as the Company was beginning to emerge from the shadows of the FCC Rebanding Proceeding, the EB Action was commenced.

(64) As is quite common for a small company, Preferred has a single individual who was the "founder" of the company and who individually holds the vast majority of the stock. Prior to 2005, the Company had only a handful of common stock shareholders; thereafter the number of shareholders has increased by a limited number. **In total there are only twenty (20) shareholders who own "common stock," which affords them general and traditional voting privileges.**

(65) The Company's "founder" is an individual – Charles M. Austin ("Austin"). **Austin holds approximately of seventy-five percent (75%) of the voting stock of the Company.** Another individual holds approximately twenty percent (20%). Thus, two individuals hold approximately ninety-five (95%) of the Company's voting stock. In contrast, the **Plaintiff only holds less than one percent (< 1%) of votes for common stock.** Consequently, the Plaintiff (and all other minority shareholders) are well aware of their limited position with the Company; thus (by law), their involvement in the Company is, and should be, exceedingly limited.

(66) The Company contends that it has kept its shareholders informed by making all reasonable and appropriate disclosures. The limited number of shareholders, combined with its having no operations to report on, along with the stifling events discussed above, has enabled the Company to provide all neeessary information to shareholders using a combination of formal and informal modes of communication. At times, the disclosures were necessarily limited due to the fact that the FCC Proceeding was a legal proceeding and the Company's attorneys and the FCC both advised the Company that it could not openly discuss the case. The Company maintains ongoing communications (generally on a weekly basis) with investors who collectively represent approximately **ninety percent (90%)** on the invested capital (debt and equity) in the Company.

(67) The Plaintiff's focus is the composition of the Company's Board of Directors ("BoD") in his Complaint. The Plaintiff contends that the BoD must have at least four (4) members, one of which is to be elected solely by the "Series A – Preferred Stockholders," and that the Company refuses to address this matter. He paints a distorted picture of this issue by failing to present all the facts. First, prior to 2007, the Company's By Laws and Certificate of Incorporation only required the BoD to have a single member. Thus prior to 2007, this is a non-issue. In 2007, the Certificate of Incorporation was amended to provide for a BoD to be comprised of from four (4) to nine (9) members. Also in 2007, prior to the Company's holding an annual meeting and conducting a BoD election, the FCC EB Action commenced. As noted above, this action effectively

precluded the Company from conducting "business-as-usual." One consequence was that, despite trying, the Company could not find any "qualified" individuals willing to serve on the BoD. Accordingly, the Company has been forced to temporarily suspend its efforts to add members to the BoD until the Company's situation improves to the point where it can attract quality candidates to serve on its BoD. Thus, contrary to the Plaintiff's contentions that the Company "refuses" to do certain things, the Company has been precluded from certain actions due to circumstances beyond its control.

(68) **In summation, the Company, through no fault of its own, has been in a holding pattern unable to predict when it can begin to construct any commercial operating facilities. Consequently, there has been limited information to disseminate to its shareholders and creditors.**

PLAINTIFF'S "FIRST CAUSE OF ACTION" (para. 34 to 39 of the Complaint) IS MOOT

(69) The Plaintiff's asks this Court to issue a "Declaration of Austin's Inability to Act on Behalf of the Company." However, his only challenge is to the composition of the Company's Board of Directors ("BoD") in his Complaint. The Complaint only challenges the composition of the Board, not Austin's current position as "President," which is the authority by which he currently, and has been, representing the Company. Under the By Laws of Preferred and its Certificate of Incorporation, Austin is the duly elected President, which is **unassailable**.

(70) The Plaintiff's Complaint is focused on the FCC Proceeding and any related settlement. In particular, the Complaint focuses on the authority of Mr. Austin to represent the Company in that matter. As noted above, Austin's authority to represent the Company in unassailable and furthermore, that proceeding has been settled and all matters have been closed.

(71) **The Plaintiff does not challenge Mr. Austin as being**: **(a)** President of Preferred, **(b)** a Director of Preferred, or **(c)** the single largest shareholder, with a personal supermajority common stock position constituting **over 75% of the votes** on all corporate matters. The Plaintiff merely pursues the holding of an Annual Meeting of Shareholders at which the "***Common Stock***" shareholders will elect three (3) individuals

to the Board of Directors by a simple majority vote. Additionally, the Plaintiff pursues the enforcement of the "single-issue" voting right afforded to a particular class of "Preferred Stock," specifically the "***Series A Preferred Stock.***" This class of stock does not have general voting privileges on corporate matters. However, they have a right to elect (as a single class vote) a single member to the Board of Directors.

(72) At this point irrefutable facts and simple mathematics are in focus. Even if the Plaintiff prevails on the "shareholder meeting" Complaint, result is clear and predictable and moot. The end result is that there will be no impact on *Austin's Authority* (past, present or future). The most that can occur is that the Chancery Court will order the Company to conduct a shareholders meeting. At said Meeting of Shareholders, the "***Common Stock***" shareholders (of which there are a total of 20 individuals) will eleet three (3) individuals to the Board of Directors by a simple majority vote; **Austin** (as the single largest shareholder with a personal supermajority common stock position constituting **over 75% of the votes**) will individually be able to cast the deciding vote for all three members of the board of directors. In essence, no other vote by any other individual (or group of individuals) is of any consequence. Obviously, Mr. Austin will elect individuals who support his position and efforts regarding the Company.

(73) Separately, the holders of "*Series A Preferred Stock*" could elect a single director, who would be the fourth member of the board. Thus, in the most extreme of predictable scenarios, a newly constituted board of directors will be at least 3 of 4 in

support of Austin. Thus there will be no fundamental change from today's authority structure.

PLAINTIFF'S "SECOND CAUSE OF ACTION" (para. 40 to 47 of the Complaint) IS MOOT

(74) The Plaintiff's "Second Cause of Action" (see para. 40 to 47 of the Complaint) is a claim that Austin has "breached his fiduciary duties." The entirety of the Plaintiff's discussion in this section is focused on the ***FCC Proceeding*** and any related settlement. The Plaintiff claims that the Company (via Austin) is pursuing a settlement that will require: (a) a sale of its FCC licenses and (b) a withdrawal of a Petition for Review in the District Court Action. **These claims are false and misleading**. Neither of these is, or ever was, part of any proposed settlement, **a fact that is confirmed by the FCC** (see para. # 5, above). The Plaintiff claims (without a shred of factual foundation) that "Austin" is personally motivated to a settlement with the FCC that includes the sale or transfer of the Company's FCC licenses.

(75) Any conjecture or supposition regarding what is, or is not, included in any "proposed settlement" is moot, since the FCC and PCSI have now executed a settlement agreement that has been approved by the judge in the FCC Proceeding.

(76) On August 6, 2009, subsequent to the Plaintiff's Complaint being filed, the Administrative Law Judge ("ALJ") in the FCC Proceeding issued his Order approving the Settlement Agreement ("Agreement") between PCSI and the FCC. Contrary to the "Chicken-Little like," **false and misleading claims of the Plaintiff**, the Company is not selling its licenses, nor has it dropped its Appeals case. Furthermore, there is nothing self-serving regarding Mr. Austin, as was further falsely claimed by the Plaintiff.

(77) The terms and conditions of the "Agreement" are objectively, and by any measure applied, highly favorable to the Company and clearly in the best interest of the Company and all of its investors. From an investors perspective there are no settlement terms that could be construed as objectionable; it is a very positive resolution for the Company. The settlement is such that there is no finding of any wrongdoing and certain impediments affecting the Company's FCC licenses have been lifted.

COMMENTS Re: RELIEF SOUGHT BY PLAINTIFF (per pgs 15,16)

(78) This Court cannot (or should not) grant any of the relief sought by the Plaintiff, since the only claims of the Plaintiff are ones which the Court cannot grant the requested relief. Any relief to the Plaintiff should be denied for all the reasons noted above, as summarized as follows:

(a) This Court cannot (or should not) eradicate the authority of the current Board or otherwise supplant its judgment as to whether or not it is practical or prudent for the Company to expand it Board at this time.

(b) This Court cannot (or should not) force the Company to expand it Board at this time, since it is impractical, financially burdensome and not in the best interest of the Company.

(c) This Court cannot (or should not) prohibit Austin from taking any action on behalf of the Company, as he is acting in his capacity as "President." The Plaintiff has made no claim against Austin being President. As noted above, Austin's position as President is unassailable.

(d) This Court cannot (or should not) issue a temporary restraining order, provide injunctive relief or otherwise interfere in Company's settlement efforts with the FCC, or other matters, since the Plaintiff's claims are based solely on false and misleading information. Furthermore, the settlement has already been completed.

(e) This Court cannot (or should not) allow itself to, in any way, be supportive of parties who are participating in conspiracy, fraud and tortuous interference.

DEFENDANTS COUNTERCLAIMS - RELIEF SOUGHT

(78) As described above, the Defendants claim that the Plaintiff (Michael Judy) in consort with his co-conspirators, is on a mission to subversively gain control of the Company and thereafter manipulate circumstances, to their personal benefit, which will exploit and be to the detriment of the Company and its other shareholders. In this conspiracy, they are committing fraud and are tortuously interfering with the Defendants and others.

(79) **WHEREFORE,** the Defendants seek the following relief.

(a) An Order by this Court prohibiting any and all co-conspirators from interfering in the business endeavors of the Defendants;

(b) An Order by this Court requiring any and all co-conspirators to invalidate and otherwise repeal any and all transactions and business endeavors that have in any way included any reference to the Defendants;

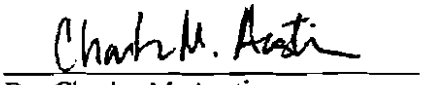
(c) An award of damages (actual, compensatory and treble) in a amount appropriate to compensate Defendants for the damages sustained or will be sustained due to the Plaintiff's (and co-conspirators) actions; and

(d) An award of attorney's fees, costs, and such further relief as the Court may deem just and proper.

Respectfully submitted,

Preferred Communication Systems, Inc.

P.O Box 153164
Irving, Tx 75015-3164



By: Charles M. Austin
Its President

PH # 214-548-3562

Charles M. Austin

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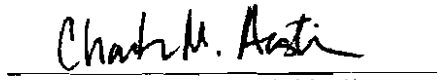

Charles M. Austin, Individually

Date: August 10, 2009

AFFIDAVIT OF

CHARLES M. AUSTIN

IN SUPPORT OF

ANSWER TO COMPLAINT
AND
DEFENDANTS' COUNTERCLAIMS

I am over the age of eighteen years and fully capable of stating the following in support of the "*Answer to Complaint and Defendants Counterclaims.*"

Based on my personal knowledge, all statements and all facts included in the "*Answer to Complaint and Defendants Counterclaims.*" are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 11, 2009

Charles M. Austin

Charles M. Austin

EFiled: Aug 17 2009 3:47PM EDT
Transaction ID 26627023
Case No. 4662-CC

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August 14, 2009

Arlene Simmons, Chief Deputy
Register in Chancery
Court of Chancery
34 The Circle
Georgetown, Delaware 19901

Re: ***Michael D. Judy v. Preferred Communication Systems, Inc.,***
Consolidated C.A. Nos. 4662-CC, 4720-CC and 4721-CC

Dear Ms. Simmons:

The defendants in this consolidated matter have appeared *pro se* through Charles M. Austin. Mr. Austin sent me the attached Answer to Complaint (responding to the Complaint in C.A. No. 4720-CC) and asked that we file it with the Court. By enclosing it under cover of this letter, I am doing so.

Sincerely yours,

Peter J. Walsh, Jr. (#2437)

PJW:bls/929364

Enclosure

cc: The Honorable William B. Chandler III
Charles M. Austin

IN THE
COURT OF CHANCERY
OF THE
STATE OF DELAWARE

MICHAEL D. JUDY	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CA #: 4720-CC**
	)	
PREFERRED COMMUNICATION SYSTEMS, INC.,	)	
	)	
	)	
Defendants.	)	

ANSWER TO COMPLAINT

(1) The Plaintiff, Michael D. Judy ("Plaintiff" or "Judy") has filed a complaint ("Complaint") against Defendant Preferred Communication Systems, Inc. ("Preferred" or the "Company"), which has been designated as the case styled and numbered above. The following is the Defendants' answer to that complaint.

NATURE OF THE ACTION

(2) In this particular action the Plaintiff's seeks to have this Court compel the Defendant to hold an annual meeting for the election of directors. However, this is not the only action the Plaintiff has filed against the Defendant; there are two others that in

some ways are interconnected. The Defendant believes and contends that this case, and the other two are part of an overall conspiracy that includes fraud and the tortuous interference with the Defendant's business endeavors.

(3) As noted above, the Plaintiff has separately filed two other actions in this Court against the Defendant. The first is a section 220 (records inspection) case (see Case # 4662-CC). The seeond is an action (see Case # 4721-CC) that seeks a declaration that the board of directors of the Company (the "Board") is not currently empowered to take action on behalf of the Company and its shareholders. That action further seeks to enjoin Defendants from entering into a "settlement agreement" (in the "FCC Proceeding" discussed below, the Plaintiff's Complaint refers to this matter as the "FCC Hearing") or other agreement whereby the Company would generally sell or transfer its FCC licenses. The Plaintiff claims (without a shred of factual foundation) that Charles M. Austin ("Austin") the President, sole-director and supermajority shareholder, is personally motivated to a settlement with the FCC that includes the sale or transfer of the Company's FCC licenses.

(4) The Plaintiff has moved for a consolidation of the three cases he has filed against the Defendant; the instant case and the two others referenced above (Case # 4662 and 4721). In the interest of brevity, this Answer will not include all the expanded and interconnected discussion included in its "Answers" to the other two cases, but instead

will include them herein by reference. (see Defendants' "Answers" filed in case # 4662 and # 4721).

(5) These actions were purportedly prompted by the Plaintiff's "interest" in the Company being a party to a proceeding before the Federal Communications Commission ("FCC"), herein referred to as the "FCC Proceeding." The Plaintiff claims that Austin's efforts and objectives in the FCC Proceeding are not in the best interests of the Company. To the contrary, it is the Plaintiff who has a hidden agenda that, if successful, will be exceedingly damaging to the Company and all of its investors. The Defendant believes that the Plaintiff has been endeavoring to manipulate the Chancery Court of Delaware (and the Administrative Law Judge at the FCC) into enabling him to be injected into the FCC Proceeding and to inappropriately influence and alter prudent decisions made by the Company and to gain undue influence regarding the Company's future endeavors. Furthermore, the Defendants believe that the Plaintiff (in his Complaints) knowingly and willfully based his Complaints on false and misleading information in an effort to provide artificial substance and a "shock value" to his Complaint.

(6) On information and belief, it is the Defendants' contention and counterclaim that the Plaintiff is part of a **multifaceted conspiracy** to subversively obtain control the Company and to interfere with its business interests; and in that process, is committing **fraud** and is **tortuously interfering** with the Defendants' business

endeavors. The participants in the conspiracy (and thus the fraud and tortuous interference) and thus parties to the counterclaims include: (a) **the Plaintiff - Michael Judy**, (b) **Pendleton C. Waugh**, (c) **Carole Downs**, (d) **Smartcomm LLC and its affiliates** (e) **Preferred Spectrum Investments, LLC** (not related to the Company), and (f) **other possible co-conspirators to be named later**.

(7) The Plaintiff's Complaint(s) (and his attempt to manipulate this Court) is focused on the ***FCC Proceeding*** and any related settlement. The Plaintiff claims that the Company (via Austin) is pursuing a settlement that will require: (a) a sale of its FCC licenses and (b) a withdrawal of a Petition for Review in the District Court Action. **These claims are false and misleading**. Neither of these is, or ever was, part of any proposed settlement, **a fact that is confirmed by the FCC**. In the ***FCC Proceeding***, the Plaintiff filed a "motion to intervene" using his Delaware Complaints as a justification. The Enforcement Bureau ("EB") of the FCC vigorously opposed this motion (per FCC Opposition filed July 23, 2009 in EB Docket No. 07-147). The FCC didn't simply oppose Judy's motion, they were very critical of the substance of his filings (both in Delaware and in the FCC Proceeding). **The FCC specifically commented on the Plaintiff's claims of an "asset sale" and "dropping the appeals" case as being a part of any settlement, thereby confirming the Plaintiff's statements as being false and misleading, by stating:**

> **"No party has filed a settlement to that effect, and thus, these claims are specious."** *("FCC Opposition," paragraph 9, page 5)*

The following are two additional quotes from the FCC's opposition filing (as noted above) to the Judy (*the "Plaintiff" in the instant case, the "Movant" in the FCC Proceeding*) "Motion to Intervene" in the FCC Proceeding:

> **"...a thorough reading of the Motion makes clear that it represents a subterfuge to apply pressure in a private contract dispute."** *("FCC Opposition," paragraph 8, page 4)*

> **"Movants' intervention now appears to be nothing more than an attempt to use two unrelated proceedings to gain leverage over PCSI and Austin for their own private purposes. Consequently, the Movants' purported justifications are suspect."** *("FCC Opposition," paragraph 11, page 5)*

(8) It would be sufficiently problematic if the Plaintiff was innocently using inaccurate information. However, that is not the situation here, which makes the Plaintiff's claims so egregious and damaging. The Defendants, on information and